sums on the development of the land, and in mitigation of that expenditure it realised and disposed of timber which formed part of its original capital asset.

For these reasons their Lordships will advise His Majesty the Yang di-Pertuan Agong that the appeal should be allowed and the order of Anuar J. restored. The respondent must pay the appellant's cost here and before the Federal Court.

Appeal allowed.

Solicitors : *Waterhouse & Co.; Stephenson Harwood.*

SINGAPORE REPORTS

LEONG KUM FATT v. ATTORNEY-GENERAL, SINGAPORE

[C.A. (Wee Chong Jin C.J., Lai Kew Chai & Thean JJ.) April 25, 1985]

[Singapore – Civil Appeal No. 25 of 1984]

Administrative law – Dismissal of probationary police inspector – Two charges of assault – Finding of guilty by Board – Decision confirmed by Public Service Commission – Certiorari not applied for – Declaration sought in High Court – Allegation of breach of Police Regulations and natural justice – Constitutional right of hearing – Sufficiency of evidence – Constitution of Singapore, art. 110(3) – Police Force Act (Cap. 78), ss. 27(1) (c) & 28(1) – Police Regulations 1959, regs. 7, 8 & 9.

Police – Dismissal of probationary police inspector – Allegation of breach of Police Regulations and natural justice.

The appellant, a former probationary inspector of the Singapore Police, was dismissed by the Commissioner of Police after he was found guilty by a Board of two charges of assaulting a person under police custody. He appealed to the Public Service Commission which confirmed the Commissioner's decision. Instead of applying for an order of *certiorari*, the appellant commenced an action in the High Court seeking a declaration that his dismissal from the Police Force was null and void and for consequential relief.

The appellant's case is based on two main grounds: (1) The proceedings of the Board were conducted in breach of the provisions of the Police Regulations and/or in breach of the rules of natural justice and he was deprived of his constitutional right under article 110(3) of the Singapore Constitution which provides that no public officer shall be dismissed without being given a reasonable opportunity of being heard. The appellant also alleged that the Chairman of the Board was biased against him. (2) The appellant claimed that the evidence before the Board was not capable in law of warranting the findings that he was guilty of the two charges of assault and that the findings were so arbitrary and capricious that no reasonable person could have come to such findings on the evidence before the Board.

Held, dismissing the appeal with costs: (1) the Board's findings of fact are not open to review by the Court in the exercise of its supervisory powers except on the principles laid down in *Edwards* v. *Bairstow*. There was sufficient evidence for the Board to come to its finding that the appellant was guilty of both charges;

(2) the Board had given the appellant the opportunity to be heard and that it had acted fairly towards him in carrying out its decision-making process. All the complaints of the appellant against the Board and its Chairman were on the evidence in the High Court properly rejected by the learned trial judge.

Cases referred to:

(1) *O'Reilly* v. *Mackman* [1982] 3 W.L.R. 1096.
(2) *Edwards* v. *Bairstow* [1956] A.C. 14, 36.
(3) *Wong Keng Sam & Ors.* v. *Pritam Singh Brar* [1968] 2 M.L.J. 158, 160.

COURT OF APPEAL.

J. B. Jeyaretam for the appellant.
Jeffrey Chan for the respondent.

Cur. Adv. Vult.

Lai Kew Chai J. (delivering the Judgment of the Court): The Appellant, a former Probationary Inspector of The Singapore Police, was dismissed by the Commissioner of Police under section 28(1) of The Police Force Act, Cap. 78 (hereinafter referred to as "the Act") after he was found guilty by a Board of having assaulted one Tan Lian Ann, a 28-year old shop assistant, on two occasions, once at 10 a.m. and then again at 4 p.m. on July 23, 1976, which was conduct prejudicial to the good order and discipline of the Police Force and contrary to section 27(1) (c) of the Act. He appealed to the Public Service Commission which confirmed the decision of the Commissioner of Police.

Not satisfied with those decisions, and instead of applying for an order to quash the aforesaid decisions by *certiorari* under Order 53 of The Rules of The Supreme Court, 1970, which would have required leave of the High Court and which would have entailed the procedural disadvantages fully elaborated by Lord Diplock in *O'Reilly* v. *Mackman*,[1] the Appellant commenced an action in the High Court seeking a declaration that his dismissal from the Police Force was null and void. He also sought a declaration that he had continued to be and was still a Probationary Inspector in the Police Force and was entitled to be remunerated as such. Alternatively, he claimed damages for wrongful dismissal.

In the High Court, the Appellant made two principal assertions against the Board which was set up by and which conducted the disciplinary enquiry against him under The Police Regulations, 1959 (hereinafter referred to as "the Police Regulations"). He claimed that the proceedings of the Board were conducted in breach of the provisions of the Police Regulations and/or in breach of the rules of natural justice with the consequence that he was not given a reasonable opportunity of being heard before he was dismissed from the service and that he was deprived of his constitutional right under Article 110(3) of The Constitution of Singapore which provides that no public officer shall be dismissed without being given a reasonable opportunity of being heard. The Appellant also made the serious allegation that the Chairman of the Board was biased against him. The second principal complaint of the Appellant went to the nature of the evidence before and the assessment of the evidence by the Board. Under this broad category, the Appellant claimed that the evidence before the Board was not capable in law to warrant the findings that the Appellant was guilty of the two charges of assault and that the said findings were so arbitrary and capricious that no reasonable person could have come to such findings on the evidence before the Board.

At the end of the trial, the High Court found that the Board, having complied with the requirements of the Police Regulations and the rules of natural justice, had acted fairly towards the Appellant in its decision-making process, that the Chairman of the Board had been "firm but fair" and that "there was sufficient that the (Appellant) was guilty of both the charges." The learned trial Judge accordingly dismissed the Appellant's claims with costs.

In the appeal before us, counsel for the Appellant repeated the same complaints against the Board and its Chairman. In the light of the evidence before the Board and its findings and of the evidence before the High Court and the findings of the learned trial Judge, we dismissed the appeal with costs.

The matter arose in this way. The Appellant joined the Police Force as a Police Constable in October 1974. In June 1975, he was promoted to the rank of Probationary Inspector. Between March 15, and August 25, 1976, he was Inspector-in-charge of Secret Societies in "G" Division and was stationed at the Joo Chiat Police Station.

On July 22, 1976 the Appellant was referred to a case of suspected rioting in which, it was believed, secret society elements were involved. One Lim Ho Kiat, a 17-year old provision store worker, had lodged a police report the previous evening. In the report, Lim Ho Kiat claimed that on the night of July 20, 1976 at the BP petrol kiosk at Joo Chiat Road, Singapore, which was in front of Koh Peng Bar, a group of some 10 to 20 male Chinese armed with wooden sticks had assaulted him. The Appellant started investigations. At about 8.30 a.m. on

July 23, 1976 four suspects were escorted into the Appellant's office. They were Tan Lian Ann, Lim Ho Kiat, Soh Kee Hwee and Tan Yong Chiang. After questioning them, the Appellant placed the four suspects in the police lock-up.

On July 30, 1976, the father of Tan Lian Ann lodged a complaint with the Complaints Bureau alleging Tan Lian Ann was assaulted twice on July 23, 1976 by the Appellant: once at about 10 a.m. when Appellant slapped his face several times and the other occasion at about 4 p.m. when the Appellant fisted his stomach once.

It was after two years had elapsed that the Appellant was informed by a letter dated July 31, 1978 that in accordance with the Police Regulations a Board had been appointed to hear the two charges against him, *viz*, that on July 23, 1976 at about 10 a.m. at the Crime Branch, Joo Chiat Police Station he did assault Tan Lian Ann by slapping his face several times and that at about 4 p.m. the same day and at the same place too did assault Tan Lian Ann by fisting him once on his stomach. It was alleged that the Appellant had committed offences under section 27(1)(c) of the Act which was punishable under section 28(1) of the Act.

On August 11, 1978 the Appellant, with his defending officer, ASP H.L. Miranda, appeared before the Board which comprised Supt. Ng Leng Hua, the Chairman and DSP Ee Guan Chwee. The Prosecuting Officer was ASP D. Ferreira. The hearing ended on November 11, 1978 after adjournments in between. On January 27, 1979 the Board announced that it had found the Appellant guilty as charged. The Appellant chose not to make a mitigation plea.

The Board set out its Grounds of Decision dated January 31, 1979. The Board believed Tan Lian Ann to be a witness of truth. Tan's evidence was that he was assaulted by the Appellant at the times and in the manner set out in the two charges. There was a conflict of evidence as to when Tan Lian Ann, the victim of the Appellant's assault, was released from the Joo Chiat Police Station. The Appellant claimed that he had released the four suspects, including Tan Lian Ann, at 1.55 p.m. on July 23, 1976. Tan had signed the charge office Station Diary confirming that he was released at 1.55 p.m. that day and that he had no complaints to make. This piece of documentary evidence was produced before the Board on behalf of the Appellant only after the prosecution had closed its case against the Appellant. If this claim was true, the second assault at 4 p.m. on that day could not have taken place. Tan Lian Ann was therefore recalled and he said in evidence before the Board that after signing the Station Diary at 1.55 p.m. on July 23, 1976 a Malay junior officer brought him upstairs to the Appellant's office. He said he went straight home and arrived home, which was only half mile from the police station, at about 5 p.m. The Board came to the conclusion that the signature of Tan Lian Ann in the Station Diary, in which he apparently acknowledged that he was released at 1.55 p.m. on July 23, 1976 was contrived by the Appellant who prevented Tan Lian Ann from leaving until after 4 p.m. that afternoon. The Board also accepted the evidence of Tan Lian Ann's father who said he saw Tan Lian Ann at about 4.15 p.m. "sitting on a bench along the passage way in the station". The Appellant's denial of the assault and whatever evidence he produced were disbelieved by the Board.

ASP Ng Fook Foo was the gazetted officer who made the preliminary investigation as required by Regulation 8(1). In the course of the investigation, he took statements from Soh Kee Kwee and Tan Yong Chiang, two of the four suspects who were interrogated by the Appellant. Both Soh Kee Kwee and Tan Yong Chiang in their written statements to ASP Ng stated that they saw the Appellant slapping Tan Lian Ann several times on his face. It appears that Soh saw this at about 3 p.m. on July 22, 1976 whereas Tan Yong Chiang saw the slapping at about 10 a.m. on July 23, 1976: and the latter time was the case for the prosecution in the first charge preferred against the Appellant. But both Soh Kee Kwee and Tan Yong Chiang in giving evidence before the Board turned hostile and they were entirely discredited by their statements given to ASP Ng.

Just before the prosecution closed its case on August 25, 1978, the defending officer of the Appellant applied for the production of the complaint lodged by Tan Lian Ann's father and after arguments, it was admitted in evidence. Thereupon, the Appellant's defending officer applied for the recall of Tan Lian Ann and his father for further cross-examination as he wished "to discredit them". This was refused and, although this was not recorded in the notes of the proceedings, the Chairman at the trial in the High Court explained that he had refused the application because on comparing the complaint with the evidence of Tan Lian Ann and of his father, he had noted that there was no material discrepancy. This explanation was accept-

ed by the High Court. Having looked at the complaint, we too are of the view that the application for further cross-examination was properly refused.

In the High Court, the Appellant in support of his contention that the finding of the Board was perverse or unsupported by any evidence alleged, *inter alia*, that the Board had failed to evaluate the evidence of Tan Lian Ann and that of his father in the light of the other evidence, particularly the entries in the Station Diary and the lock-up Diary in which Tan Lian Ann had signed as having been released at 1.55 p.m. without any complaint to make against any person. In further support of the Appellant's denial that he had assaulted Tan Lian Ann, the Appellant in the High Court called as his witness one Chua Yat Aun who had volunteered to come forward and give evidence after he had read about the High Court hearing in the Chinese press. Chua Yat Aun, whose mother was the sister of Tan Lian Ann's father, was a Cadet Inspector attached to the Joo Chiat Police Station at the material time. According to Chua Yat Aun he saw Tan Lian Ann and the other suspects in the office of the Appellant at about 10 a.m. on the day in question. When Tan Lian Ann and the others were no longer in the office, he saw the Appellant and told him Tan Lian Ann was his cousin and asked the Appellant to help Tan Lian Ann in any way possible. The Appellant told him he would investigate the matter further and would release Tan Lian Ann if there was no evidence against him. At about 11.45 a.m. Chua Yat Aun saw Tan Lian Ann in the lock-up and on being asked if he was assaulted by any police officer, Tan had replied in the negative. Chua's further evidence was that at 2.45 p.m. the same afternoon, he went to see Tan Lian Ann at the lock-up but he was not there. He found out that Tan Lian Ann had been released. Then he went to see the Appellant who told him that Tan Lian Ann was released because there was no evidence against him. Chua Yat Aun did not see Tan Lian Ann anywhere in the office of the Appellant nor anywhere in the Police Station that day after he saw Tan Lian Ann at 11.45 a.m. On the following day, Chua Yat Aun and his mother visited the house of Tan Lian Ann's father. On being asked, Tan Lian Ann's father said that his son had not complained that he was assauted by a police officer.

If the evidence of Chua Yat Aun had been produced before the Board, it might or might not have assisted the Appellant. The learned trial Judge found that his evidence could not be believed and that, in any case, Chua Yat Aun could not say that the Appellant never assaulted Tan Lian Ann.

In considering the submission of the Appellant that the Board had misdirected itself on the evidence, we have to reiterate that the tribunal's findings of fact are not open to review by the court in the exercise of its supervisory powers except on the principles laid down in *Edwards* v. *Bairstow*.[2] On this basis, we entirely agree with the learned trial Judge that there was sufficient evidence for the Board to come to its finding that the Appellant was guilty of both the charges.

We now turn to the Appellant's submission that the proceedings of the Board were conducted in breach of the Police Regulations and/or natural justice with the consequence that he was deprived of his constitutional right of an opportunity to be heard and the submission that the Chairman of the Board was biased.

In dealing with this submission, we have to refer to the provisions for the duties and discipline of every Police Officer. They are set out in Part III of the Act. By virtue of section 28(1) read with section 27(1) of the Act, an inspector who is found guilty of any offence under section 27(1) may be dismissed by the Commissioner of Police. The offence with which we are concerned is set out in section 27(1) (c) which is "conduct to the prejudice of good order and discipline."

The Police Regulations provide for the procedure under which any disciplinary enquiry against a police inspector is to be conducted. By Regulation 8(1), it is provided that if a complaint is made against an inspector, a preliminary investigation by a gazetted officer shall be made. If such preliminary investigation shows the complaint is well founded a report setting out the facts of the case shall be submitted to the Commissioner of Police. If the Commissioner of Police considers that the facts so warrant, he will cause a charge or charges to be framed against the inspector concerned and will appoint a Board to conduct a disciplinary enquiry. The Board shall consist of two gazetted officers.

By Regulation 8(4) it is provided that the Board shall hear and record all the evidence for the prosecution in accordance with the procedure laid down in Regulation 7 of the Police Regulations for subordinate officers.

As Regulation 7(5) of the Police Regulations

will have to be referred to later in these Grounds of Judgment, we set it out in full:

"If the officer concerned claims to be tried, all the evidence shall be given in his presence and all exhibits may be seen by him. He shall be allowed to cross-examine all witnesses for the prosecution, and may give evidence in his defence and call any witnesses to give evidence on his behalf. He and his witnesses may be cross-examined by the prosecution"

When the evidence has been fully recorded the enquiry shall be postponed and a copy of the charge or charges and of all the evidence recorded shall be furnished to the inspector concerned, who shall be called upon to produce to the Board on a stated date his written answer together with a list of all his witnesses. The Board shall record the evidence of such witnesses, and the inspector concerned and his witnesses may be cross-examined. So far as "evidence" within the meaning of Regulation 8(4) is concerned, we agree with the learned trial Judge that it is information that is given in a legal investigation to establish or refute the fact or point in question and that it does not include all questions asked, objections taken, applications made or rulings delivered.

The Board shall then record its finding and also, if so directed by the Commissioner of Police, its recommendations: see Regulation 8(4).

The procedure of the Board shall strictly follow that laid down in the Police Regulations, although the Board is not bound by, but it may look for guidance from, the Evidence Act or the Criminal Procedure Code. However, there are two types of regulations. There are those designed to give effect to the provisions of Article 110(3) of The Constitution of Singapore, which is the supreme law of Singapore. Any contravention of such regulations, for example Regulation 7(5), will give a person aggrieved a legal right to redress in a Court of law and the findings will be vitiated: see *Wong Keng Sam & Ors.* v. *Pritam Singh Brar.*[3] On the other hand, the rest of the Police Regulations are merely directory and, unlike the contravention of the mandatory provisions, any contravention of these may be excused so long as the Board had, taking the entire decision-making process as a whole, acted fairly to the person whose conduct is enquired into.

The Appellant complained that, contrary to Regulation 7(5), his defending officer was prevented from cross-examining Tan Lian Ann, Tan Lian Ann's father and ASP Ng Fook Foo on the complaint lodged by Tan Lian Ann's father. This submission was without substance. The Chairman of the Board had compared the complaint with the evidence of Tan Lian Ann and of his father and had rightly concluded that there were no material discrepancies to allow impeachment proceedings. The Chairman did not, as counsel for the Appellant submitted, concede in the High Court that his refusal to allow further cross-examination was wrong.

The Appellant also complained that the record of the proceedings was not complete contrary to Regulations 8 and 9 of the Police Regulations. The evidence of witnesses before the Board was fully recorded by the other member of the Board, DSP Ee Guan Chwee. Some of the arguments and questions of the defending officer, which were disallowed by the Board, were not recorded. As those were not "evidence" there was no requirement in the Police Regulations that they must be recorded.

Counsel for the Appellant sought to support his assertion of bias against the Chairman by referring to the Chairman's initial refusal to admit the Station Diary of the Police Station, his unsolicited recommendation of dismissal to the Commissioner of Police and his questions about the wrongful practice of getting detainees to acknowledge their releases when in fact there were none. It was also alleged by both the Appellant and the defending officer that just before announcing the verdict the Chairman had said words to the effect it was not he who found the Appellant guilty but that the Appellant was found guilty. The learned trial Judge, having heard the Chairman and DSP Ee Guan Chwee, found that the Chairman did not make the statement attributed to him. The learned trial Judge has stated that he could "find nothing to criticise the Chairman on his conduct of the proceedings".

We are satisfied that the Board had given the Appellant the opportunity to be heard and that it had acted fairly towards him in carrying out is decision-making process. All the complaints of the Appellant against the Board and its Chairman were on the evidence in the High Court properly rejected by the learned trial Judge. We accordingly dismiss the appeal with costs.

Appeal dismissed.

Solicitors : *J. B. Jeyaretnam & Co.*